

REMARKS

Prior to the instant response, claims 35, 36, 38-64, 66 and 68 were pending in the application. By amendment herein, claims 35, 59-63, and 68, have been amended, claims 36, 38, 39, 42, and 44-52 have been cancelled, and new claims 69-72 has been added. Thus, claims 35, 40-41, 43, 53-64, 66, and 68-72 are now pending. Support for the amended and new claims may be found at, for example, paragraphs [0017-0019, 0023, 0025 and 0031] of the published version of the patent application.

I. Non-Statutory Double Patenting Type Rejections

Various claims have been rejected on the ground of nonstatutory obviousness-type double patenting. As noted previously, the filing of terminal disclaimers will be considered upon notification that the pending claims are otherwise allowable.

II. Claim Rejections Under 35 U.S.C. 103(a)

A. Claim 35

Independent claim 35 was rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,276,047 to Eggensperger et al. ("the '047 patent") in view of U.S. Patent No. 6,387,856 to Ofosu-Asante et al. ("the '856 patent".) For the reasons provided below, neither the '047 patent nor the '856 patent, alone or in combination, disclose, teach or suggest all the claimed elements of amended claim 35.

The undersigned incorporates by reference the arguments of the October 6, 2008, response regarding the non-combinability of the '047 patent and the '856 patent. As detailed in that response, one of ordinary skill would not have utilized the halogen complexes of the '856

patent with the compositions of '047 patent without the benefit of the teaching of the instant application (i.e., without the benefit of hindsight). Thus, a *prima facie* case of obviousness cannot be established by the combination of these documents. MPEP § 2242. Nonetheless, even if the combination of these documents is proper, neither the '047 patent nor the '856 patent discloses, teaches, or suggests, for example, the claimed range of alcohols.

Amended claim 35 requires 14-16 vol. % ethanol and 5-10 vol. % n-propanol. The '047 patent only discloses, teaches or suggests the use of compositions having a high amount of alcohol. The '047 patent teaches the use of 25 - 40 wt.% alcohol as stated in Col. 2, lines 45-48. Thus, if one of ordinary skill in the art were to select ethanol for use in the composition based on the teachings of the '047 patent, they would include 25 - 40 wt. % ethanol, or about 31.6 - 50.7 % ethanol on a volume basis (the density of ethanol is 0.789 g/ml). Likewise, if one of ordinary skill in the art were to select n-propanol for use in the composition based on the teachings of the '047 patent, they would include 25 - 40 wt. % n-propanol, or 31.1 - 49.8% n-propanol on a volume basis (the density of n-propanol is 0.8034 g/ml).

In contrast, the currently claimed composition requires a lower amount of ethanol and n-propanol. Claim 35 requires 14-16 vol. % ethanol, which is about 15% lower than the minimum provided by the '047 patent. Similarly, claim 35 requires 5-10% vol. n-propanol, which is 21% lower than the minimum provided by the '047 patent. The combined amount of ethanol and n-propanol at 26 vol. % is also 5% lower than the minimum of about 31 vol. % for these alcohols, as taught by the '047 patent. Hence, the '047 patent does not disclose, teach or suggest the claimed range of alcohols in the composition of claim 35.

With respect to the '856 patent, in the October 6, 2008, response, the significant differences in teachings between the '047 patent and the '856 patent were described. In the latest

Office Action, the Examiner notes that "the secondary reference [i.e., the '856 patent] is relied upon for its teaching of a specific disinfectant, not for the amount of surfactant in the compositions taught therein." The undersigned agrees that, due to the disparate teachings of the references (e.g., surfactant levels, solvent levels, types and amounts of active ingredients, etc.), it is improper to use the teachings of the secondary reference of '856 patent in combination with the primary reference of '047 for anything other than the fact that it was known to use iodine in detergents. Since the '856 patent does not teach how to modify the alcohol levels of the '047 patent, the '047 patent in combination with the '856 patent do not disclose, teach or suggest the claimed alcohols and claimed ranges of claim 35.

In view of the foregoing, it is respectfully submitted that claim 35 is patentable, and that the rejections of Claims 35, 40-41, 43, 53-64, 66, 68-72 under 35 U.S.C. 103(a) be withdrawn.

B. *Claim 64*

Claim 64 requires that the composition of claim 35 is capable to "rupture the phospholipid membrane of the bacteria or virus, the composition being further configured to cleave bacterial DNA and/or substantially permanently bind to bacterial DNA and viral DNA or RNA."

In the Office Action of August 27, 2007, the examiner stated:

"Language drawn to ... binding of DNA and encapsulation recite inherent properties and intended use and are afforded little patentable weight."

The undersigned respectfully submits that the examiner has not established a *prima facie* case of obviousness with respect to this claim. Mere conclusory statements, such as these, are insufficient to establish a *prima facie* case of obviousness. MPEP § 2242. The examiner has

presented no evidence that cleaning agents, such as the claimed compositions, are able to achieve the properties claimed in claim 64. Therefore, claim 64 is patentable.

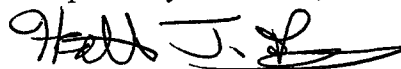
III. Entry of Amendments to the Specification submitted with Preliminary Amendment of November 14, 2005

The undersigned notes that the *Amendments to the Specification* submitted with the Preliminary Amendment of November 14, 2005, were not reflected in the publication of this U.S. Patent Application (i.e., publication no. 2006/ 0286135). It is respectfully requested that those amendments be entered into the record and reflected in any issued patent derived from the present application.

IV. Conclusion

Having responded to all objections and rejections set forth in the outstanding Office Action, it is submitted that pending claims 35, 40-41, 43, 53-64, 66, and 68-72 are in condition for allowance, and Notice to that effect is respectfully solicited.

Respectfully submitted,



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